O/Land Revenue/4c

1949

File No. 47/49.

Legal Department

G **BRANCH**

Subject:—

Opinion on the

Bombay Land Revenue

Code, 1879

1949

P.4/E

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File No.

Gen. 191 c.

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C O N T E N T S.

Legal Department File No.O/Land Revenue/49.

Sr.No.	R.I./O.No.	Subject.	Pages.
		Opinions under the Bombay Land Revenue Code, 1879.	
1.	G/613/12.x.1949	Whether the amount of Rs.15417/4/9 which Government proposes to Recover from Mr. M.B. Mutha of Satara, the District yarn agents for the Satara District, which he charged from the retail agents and weavers in excess of the actual freight (transport) incurred by him, can be recovered from him by Government as arrears of land re enue	1-4

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Office of the R.L.A.

Under Textile Comm ssioner's notification No. T.C.(17)-1/45 dated 30th January 1945 as amended by Textile Commissioner's notification No. TC (17)-5/45 dated 31st March 1945, issued in pursuance of Chause 10(b) of the Cotton Cloth and Yarn (Control) Order, 1945, the Textile Commissioner specified the maximum prices wholesale and retail at which yarnx manufactured in India may be sold It was laid down in para 3 of the said notification that where the yarn is delivered elsewhere than within the town of manufacture, the seller may add to the maximum price specified in Para 2 of the amount of freight actually paid by him or the proportionate part thereof as the case may be: provided that such additional char e shall not exceed 10 annas for every 10 lbs. where the yarn is delivered in the Bombay Province. It has now transpired that Mr. M.B.Mutha of Satara who was a quota holder and a District wholesale agent has charged to the retailers during 18th May 1945 to 28th February 1948 an amount of Rs.15,545-7-9 in excess of the freight actually paid by him. Government, therefore, directed that this amount of extra freight charges may be recovered from him and paid to the District Officer for village Industries and Industrial Co-operatives, Satara for the benefit of the retailers. Mr. Mutha has refused to pay the amount unless and until Government gets his liability established in a Court of law. He further stated that no statutory liability enforceable by any coercive process rests on him and that the matter is entirely between him and those who purchased yarn from him and that he is not liable to pay unless and until the purchasers establish in a Court of law their right to recover the excess amount charged in respect of freight. The District Magistrate has therefore raised the questi n

whether the recovery can be made by coercive measures. The question that arises for R.L.A's consideration is whether the amount can be recovered as an arrear of land revenue and if not whether the amount can be recovered by filing a suit.

As the amount does not fall under any of the categories mentioned in Section 187 of the Bombay Land Revenue Code, 1879 as recoverable as an arrear of land revenue, it cannot be recovered by coercive measures under the provisions of that Code. As regards recovery by civil suit also, it appears that the retailers or consumers to whom excess freight was charged can sue Mr. Mutha for recovery thereof but Government has no such remedy open to them. At the most Government can prosecute him for charging freight in excess of the amount actually paid by him by way of freight in contravention of para 3 of Textile Commissioner's Notification No. TC (17)-1/45, dated 30th January 1945 and thus selling above the controlled rate. It is true that at 'A' of page 57 of Provincial Textile Controller's office note it is stated that the agents cannot be prosecuted for breach of the Cotton Cloth and Yarn (Control, Order 1945 since they have not exceeded the maximum limit of 10 As. per 10 lb laid down by the Textile Commissioner. This view is based on the erroneous interpretation of Textile Commissioner's notification No.TC(17)-1/45 dated 30th January 1945. That notification provides that where yarn is delivered elsewhere than within the town of manufacture, the seller may add to the maximum price specified in para 2 the amount of the freight actually paid by him or the proportionate part thereof, as the case may be; provided that such additional charge shall not exceed 10 annas for every 10 lbs. where the yarn

is delivered at a place situated in Bombay Province. Mr. Mutha should have therefore charged the actual freight or 10 annas for 10 lbs. whichever was lower and he can be prosecuted for charging the maximum when actual freight come to less than that.

Sd/- P.N.Lad, 11/10
Remembrancer of Legal Affairs.

U.R. to P.T.C. No.G-613, dated the 12th October 1949.

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